

JAMES M. WAGSTAFFE (95535)
MICHAEL VON LOEWENFELDT (178665)
MICHAEL K. NG (237915)
KERR & WAGSTAFFE LLP
101 Mission Street, 18th Floor
San Francisco, CA 94105
Tel.: 415-371-8500
Fax: 415-371-0500
Email: wagstaffe@kerrwagstaffe.com
Email: mvl@kerrwagstaffe.com
Email: mng@kerrwagstaffe.com

DAVID M. GIVEN (142375)
NICHOLAS A. CARLIN (112532)
PHILLIPS, ERLEWINE & GIVEN LLP
50 California Street, 32nd Floor
San Francisco, CA 94111
Tel: 415-398-0900
Fax: 415-398-0911
Email: dmg@phillaw.com
Email: nac@phillaw.com

Interim Co-Lead Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MARC OPPERMAN, et al.,

Case No. 13-cv-00453-JST

Plaintiffs.

CLASS ACTION

**STIPULATION AND [PROPOSED] ORDER
TO PRESERVE APPELLATE RIGHTS OF
PREVIOUSLY ASSERTED CLAIMS**

PATH, INC., et al.

Defendants

Hernandez v. Path, Inc., No. 12-cv-1515-JST
Pirozzi v. Apple Inc., No. 12-cv-1529-JST
Gutierrez v. Instagram, Inc., No. 12-cv-6550-JST
Espitia v. Hipster, Inc., No. 4:13-cv-432-JST
(collectively, the “Related Actions”)

STIPULATION

Whereas, Plaintiffs Allen Beuershausen, Giuliana Biondi, Lauren Carter, Stephen Dean, Stephanie Dennis-Cooley, Jason Green, Claire Hodgins, Gentry Hoffman, Rachelle King, Nirali Mandalaywala, Claire Moses, Judy Paul, Maria Pirozzi, Theda Sandiford and Greg Varner, individually and on behalf of all others similarly situated (“Plaintiffs”) in the above-captioned matters filed a Consolidated Amended Class Action Complaint on September 3, 2013.

Whereas, Defendants Apple, Inc., Chillingo Ltd., Facebook, Inc., Instagram, LLC, Foursquare Labs, Inc., Kik Interactive, Inc., Twitter, Inc., Electronic Arts, Inc., Path, Inc., Yelp! Inc., Foodspotting Inc., Gowalla Inc., Rovio Entertainment Ltd. s/h/a Rovio Mobile Oy, Zeptolab UK Limited (“Defendants”) filed motions to dismiss on October 18, 2013.

Whereas, those motions were granted in part and denied in part by an order of this Court dated May 14, 2014, which also granted Plaintiffs leave to amend all claims that were dismissed.

Whereas, Plaintiffs intend to narrow the claims at issue in the case, but seek to preserve their right to appellate review of the dismissal of the claims pled in their Consolidated Amended Class Action Complaint. Rather than repleading all claims, which would require Defendants to move to dismiss and the Court to rule on the motion, the parties seek to avoid that unnecessary burden by entering into this stipulation.

Therefore, Pursuant to Civil L.R. 7-12, Plaintiffs and Defendants stipulate as follows:

1. With the exception of claims included in Plaintiffs' forthcoming amended consolidated complaint, all claims pled in the First Consolidated Amended Complaint filed on September 3, 2013 and attached hereto as Exhibit A (with the exception of Count XXV, Violations of RICO ¶¶ 723-805, as asserted against all defendants, and Count XXVI, Secondary and Vicarious Liability, Vicarious Liability - Apple as App Defendants' Agent ¶¶806-808, as asserted against App Defendants only, which Plaintiffs have voluntarily dismissed) are deemed to have been replied in a timely and proper manner following the Court's order of May 14, 2014. The Court's order of May 14, 2014 , however, shall apply to all such claims, and all such claims not included in Plaintiffs' forthcoming amended consolidated complaint shall be deemed to be involuntarily dismissed with prejudice. For purposes of appeal, the factual allegations in the

1 First Consolidated Amended Complaint will govern the sufficiency of any and all claims not
2 included in Plaintiffs' forthcoming amended consolidated complaint.

3 2. The Court's order of May 14, 2014 will be deemed to apply to any such claim,
4 but, for purposes of appellate review, dismissal of claims that are not included in Plaintiffs'
5 forthcoming amended consolidated complaint will be deemed to be without leave to amend.

6 3. For the sake of clarity, the parties agree that Plaintiffs will have the right to seek
7 appellate review of the dismissal of claims pled in the First Consolidated Amended Complaint,
8 subject to the exceptions set forth in the numbered paragraph one above, notwithstanding that
9 they are not included in their forthcoming amended complaint.

10 || Respectfully submitted,

11 | Dated: June 27, 2014

KERR & WAGSTAFFE LLP

12 By: /s/ Michael Ng
13 James M. Wagstaffe (95535)
14 Michael von Loewenfeldt (178665)
15 Michael Ng (237915)
16 KERR & WAGSTAFFE LLP
17 101 Mission Street, 18th Floor
San Francisco, CA 94105
Tel.: 415-371-8500
Fax: 415-371-0500
wagstaffe@kerrwagstaffe.com
mvl@kerrwagstaffe.com
mng@kerrwagstaffe.com

David M. Given
Nicholas A. Carlin
PHILLIPS, ERLEWINE & GIVEN LLP
50 California Street, 32nd Floor
San Francisco, CA 94111
Tel: 415-398-0900
Fax: 415-398-0911
dmg@phillaw.com
nac@phillaw.com

Interim Co-Lead Counsel for Plaintiffs

Carl F. Schwenker (admitted *pro hac vice*)
LAW OFFICES OF CARL F. SCHWENKER
The Haehnel Building
1101 East 11th Street
Austin, TX 78702
Tel: 512-480-8427
Fax: 512-857-1294
cfslaw@swbell.net

Plaintiffs' Liaison Counsel

Jeff Edwards (admitted *pro hac vice*)
EDWARDS LAW
The Haehnel Building
1101 East 11th Street
Austin, TX 78702
Tel: 512-623-7727
Fax: 512-623-7729
cfslaw@swbell.net

Jennifer Sarnelli
Kira German (admitted *pro hac vice*)
GARDY & NOTIS, LLP
501 Fifth Avenue, Suite 1408
New York, NY 10017
Tel: 212-905-0509
Fax: 212-905-0508
jsarnelli@gardylaw.com
kgerman@gardylaw.com

ATTORNEYS FOR OPPERMANN PLAINTIFFS
HOGAN LOVELLS US LLP

By: /s/ Robert Hawk
Robert B. Hawk
Maren J. Clouse
Jenny Q. Shen
HOGAN LOVELLS US LLP
4085 Campbell Ave., Suite 100
Menlo Park, CA 94025
Tel.: 650.463.4000
Fax: 650.463.4199
robert.hawk@hoganlovells.com
maren.clouse@hoganlovells.com
jenny.shen@hoganlovells.com

Clayton C. James
HOGAN LOVELLS US LLP
1200 Seventeenth Street, Suite 1500
Denver, CO 80202
Tel.: 303.899.7300
Fax: 303.899.7333
clay.james@hoganlovells.com

ATTORNEYS FOR DEFENDANT APPLE INC.
HOLLAND & KNIGHT LLP

Dated: June 27, 2014

By: /s/ Judith R. Nemsick
Christopher G. Kelly
Judith R. Nemsick
HOLLAND & KNIGHT LLP

31 West 52nd Street
New York, NY 10019
Tel.: 212.513.3200
Fax: 212.385.9010
christopher.kelly@hklaw.com
judith.nemsick@hklaw.com

Shelley G. Hurwitz
HOLLAND & KNIGHT LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel.: 213.896.2476
shelley.hurwitz@hklaw.com

**ATTORNEYS FOR DEFENDANT ROVIO
ENTERTAINMENT LTD. S/H/A ROVIO
MOBILE OY**

Dated: June 27, 2014

COOLEY LLP

By: /s/ Mazda K. Antia
Mazda Kersey Antia
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Tel.: (858) 550-6000
Fax: (858) 550-6420
mantia@cooley.com

Michael G. Rhodes
Matthew D. Brown
COOLEY LLP
101 California Street
Fifth Floor
San Francisco, CA 94111-5800
Tel.: 415-693-2000
rhodesmg@cooley.com
brownmd@cooley.com

Christopher B. Durbin
COOLEY LLP
1700 Seventh Avenue, Suite 1900
Seattle, WA 98101-1355
Tel.: (206) 452-8700
Fax: (206) 452-8798
cdurbin@cooley.com

Dated: June 27, 2014

MORRISON & FOERSTER LLP

By: /s/ David McDowell
David Frank McDowell
MORRISON & FOERSTER LLP

555 W. Fifth Street
Suite 3500
Los Angeles, CA 90013
Tel.: 213.892.5200
Fax: 213.892.5454
dmcdowell@mofo.com

**ATTORNEYS FOR DEFENDANT
FOURSQUARE LABS, INC.**

ZWILLGEN LAW LLP

By: /s/ Anna Hsia
Anna Hsia
ZWILLGEN LAW LLP
915 Battery Street, Second Floor, Suite 3
San Francisco, CA 94111
Tel.: 415.590.2340
Fax: 415.590.2335
anna@zwillgen.com

Marc J. Zwillinger (admitted *pro hac vice*)
Jacob A. Sommer (admitted *pro hac vice*)
ZWILLGEN PLLC
1705 N St NW
Washington, DC 20036
Tel.: 202.296.3585
Fax: 202.706.5298
marc@zwillgen.com
jake@zwillgen.com

**ATTORNEYS FOR DEFENDANTS
ELECTRONIC ARTS, INC. AND CHILLINGO
LTD.**

FENWICK & WEST LLP

By: /s/ Tyler G. Newby
Tyler G. Newby (Bar No. 205790)
Jedediah Wakefield
Kathleen Lu
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
Tel.: 415.875.2300
Fax: 415.281.1350
tnewby@fenwick.com
jwakefield@fenwick.com
klu@fenwick.com

ATTORNEYS FOR DEFENDANT PATH, INC.

DURIE TANGRI LLP

By: /s/ Michael H. Page
Michael H. Page

1 DURIE TANGRI LLP
2 217 Leidesdorff Street
3 San Francisco, CA 94111
4 Tel.: 415.362.6666
5 Fax: 415.236.6300
6 mpage@durietangri.com

7 **GEORGE & DONALDSON, L.L.P.**

8 Peter D. Kennedy
9 GEORGE & DONALDSON, L.L.P.
10 114 W. 7th Street, Suite 1100
11 Austin, TX 78701
12 Tel.: 512-495-1400
13 Fax: 512-499-0094
14 pkennedy@gdf.com

15 **ATTORNEYS FOR DEFENDANTS
16 YELP! INC. AND FOODSPOTTING, INC.**

17 **PERKINS COIE, LLP**

18 By: /s/ Timothy Alger
19 Timothy L. Alger
20 Julie Erin Schwartz
21 PERKINS COIE, LLP
22 3150 Porter Drive
23 Palo Alto, CA 94304
24 Tel.: 650.838.4300
25 Fax: 650.838.4350
26 talger@perkinscoie.com
27 jschwartz@perkinscoie.com

28 Ryan T. Mrazik
29 Amanda J Beane
30 PERKINS COIE, LLP
31 1201 Third Avenue, Suite 4900
32 Seattle, WA 98101
33 Tel.: (206) 359-8000
34 Fax: (206) 359-9000
35 RMrazik@perkinscoie.com
36 ABeane@perkinscoie.com

37 **ATTORNEYS FOR DEFENDANT TWITTER,
38 INC.**

39 **DHILLON & SMITH LLP**

40 By: /s/ Krista L. Shoquist
41 Harmeet K. Dhillon
42 Krista Lee Shoquist
43 DHILLON & SMITH LLP
44 177 Post Street, Suite 700
45 San Francisco, CA 94108
46 Tel.: 415-433-1700
47 Fax: 415-520-6593

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20
21
22
23
24
25
26
27
28
harmeet@dhillonsmith.com
kshoquist@dhillonsmith.com

ATTORNEYS FOR DEFENDANT GOWALLA
INC.

Dated: June 27, 2014

MITCHELL SILBERBERG & KNUPP LLP

By: /s/ Jeffrey M. Movit
Jeffrey M. Movit
Christine Lepera
MITCHELL SILBERBERG & KNUPP LLP
12 East 49th Street, 30th Floor
New York, NY 10017
Tel.: 917.546.7708
Fax: 917.546.7678
jmm@msk.com
ctl@msk.com

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21
22
23
24
25
26
27
28
Valentine Antonavich Shalamitski
MITCHELL SILBERBERG & KNUPP LLP
11377 W Olympic Blvd
Los Angeles, CA 90064
Tel.: 310-312-3736
vas@msk.com

ATTORNEYS FOR DEFENDANT ZEPTOLAB
UK LIMITED

[PROPOSED] ORDER

Pursuant to the stipulation of the parties and good cause appearing thereof, the stipulation as between Plaintiffs Opperman, et al. (“Plaintiffs”) and Defendants Apple, Inc., Chillingo Ltd., Facebook, Inc., Instagram, LLC, Foursquare Labs, Inc., Kik Interactive, Inc., Twitter, Inc., Electronic Arts, Inc., Path, Inc., Yelp! Inc., Foodspotting Inc., Gowalla Inc., Rovio Entertainment Ltd. s/h/a Rovio Mobile Oy, Zeptolab UK Limited (“Defendants”) through their respective counsel is granted.

With the exception of claims included in Plaintiffs' forthcoming amended consolidated complaint, all claims pled in the First Consolidated Amended Complaint filed on September 3, 2013 and attached hereto as Exhibit A (with the exception of Count XXV, Violations of RICO ¶¶ 723-805, as asserted against all defendants, and Count XXVI, Secondary and Vicarious Liability, Vicarious Liability - Apple as App Defendants' Agent ¶¶ 806-808, as asserted against App Defendants only, which Plaintiffs have voluntarily dismissed) are deemed to have been replied in a timely and proper manner following the Court's order of May 14, 2014. The Court's order of May 14, 2014, however, shall apply to all such claims, and all such claims not included in Plaintiffs' forthcoming amended consolidated complaint shall be deemed to be involuntarily dismissed with prejudice. For purposes of appeal, the factual allegations in the First Consolidated Amended Complaint will govern the sufficiency of any and all claims not included in Plaintiffs' forthcoming amended consolidated complaint.

The Court's order of May 14, 2014 shall apply to any such claim, but, for purposes of appellate review, dismissal of claims that are not included in Plaintiffs' forthcoming amended consolidated complaint will be deemed to be without leave to amend.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: , 2014

The Honorable Jon S. Tigar
United States District Judge

1
2 I attest that concurrence in the filing of this document has been obtained from the other
3 signatories listed above.

4 Dated: June 27, 2014

KERR & WAGSTAFFE LLP

5 By: /s/ Michael Ng

6 Michael Ng

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CERTIFICATE OF SERVICE

2 I certify that on this day, June 27, 2014, I caused a copy of this STIPULATION TO PRESERVE
3 APPELLATE RIGHTS OF PREVIOUSLY ASSERTED CLAIMS and Proposed Order to be
4 served on all counsel of record via the CM/ECF system.

KERR & WAGSTAFFE LLP

By: /s/ Michael Ng
Michael Ng